

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.
Plaintiff,
v.
GOOGLE INC.
Defendant.

Case No. CV 10-03561 WHA

**[PROPOSED] ORDER ON MOTION TO
STRIKE REGARDING SCOPE OF ORACLE'S
COPYRIGHT INFRINGEMENT CLAIMS**

Dept.: Courtroom 8, 19th Floor
Judge: Honorable William H. Alsup

Before the Court is Defendant Google Inc.'s Motion to Strike Portions of Plaintiff Oracle America, Inc.'s Expert Reports (ECF No. 1454). The Court orders as follows:

Based upon the prior verdict, the Federal Circuit's decision in *Oracle America, Inc. v. Google Inc.*, 750 F.3d 1339 (Fed. Cir. 2014), and Google's stipulation during the hearing, the Court hereby orders as follows: It is undisputed that all releases of Android since Froyo—from and including Gingerbread through Marshmallow (including the foregoing releases when used for Android TV, Android Auto, Android Wear and Brillo)—reproduce the declaring code and the structure, sequence, and organization of the 37 Java API packages, and thereby infringe Oracle's copyrights in Java SE versions 1.4 and 5.0, subject to Google establishing its defense of fair use.

Oracle's claims of copyright infringement in this case are limited to infringement of Java SE 1.4 and 5.0. Oracle reserves its claims of infringement of Java SE versions 6.0 and 7.0, and both sides reserve all arguments regarding such claims. In particular, though without any limitations, Oracle reserves its position that Google is on notice of those claims as contemplated

1 by this suit and therefore they are equitably tolled by the statute of limitations, and Google
 2 reserves its position that Oracle has waived its claim regarding Java SE 6 by not seeking a prior
 3 jury verdict on that version of Java SE during the first trial of this action.

4 The following enumerated portions of Oracle's expert reports served on January 8, 2016,
 5 are stricken: Dr. Chris Kemerer: ¶¶ 47-50 (including heading E), 208 (references to Java SE 6 and
 6 SE 7); Mr. Robert Zeidman: ¶¶ 45, 106 (all text after "Java SE 5"), 120-125 (including heading
 7 D), 146 and Exhibits V and W. Oracle acknowledges that Google does not waive any right to
 8 challenge any of the remaining information or opinions contained in any of the reports of Oracle's
 9 experts, whether by way of *Daubert* motion, motion *in limine*, evidentiary objection, or any other
 10 objection.

11 Questions concerning the admissibility of references to Java SE 6.0 and Java SE 7.0 as
 12 they relate to fair use (as opposed to infringement) and damages are not determined by this Order.
 13 The Court will determine the relevance and admissibility of such evidence on a case-by-case
 14 basis.

15 **IT IS SO ORDERED.**

16 Dated:

17 By:

18 HON. WILLIAM ALSUP
 19 UNITED STATES DISTRICT JUDGE

20 Approved as to form:

21 Dated: February 3, 2016

22 ORRICK, HERRINGTON & SUTCLIFFE
 23 LLP

24 By:

25 /s/ Annette L. Hurst
 26 ANNETTE L. HURST

27 Attorneys for Plaintiff
 28 ORACLE AMERICA, INC.